IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RETNAMA SADAVISAN, Plaintiff,	:	CIVIL ACTION
v.	:	
JO ANNE BARNHART, COMMISSIONER OF SOCIAL SECURITY,	:	
Defendant.	:	NO. 01-5837

OPINION AND ORDER

Newcomer, S.J. June , 2003

Currently before the Court are the Parties' Cross Motions for Summary Judgment. For the following reasons, the Plaintiff's Motion shall be granted, and Defendant's Motion denied.

I. Procedural History

The Plaintiff first applied for Disability Benefits (DIB) on March 6, 2000. Her initial application was denied on May 21, 2000, and on July 24, 2000, she filed a request for a hearing before an Administrative Law Judge. The hearing was presided over by Judge William J. Reddy on December 4, 2000. On February 15, 2001, Reddy held that Plaintiff was not disabled under the Social Security Act. Plaintiff appealed this decision to the Appeals Council, but on September 27, 2001, they denied review, making the ALJ's decision the final decision of the agency.

II. Facts of the Case

A. Personal and Work History

Plaintiff Retnamma Sadasivan was born on Jan. 15, 1956, and is categorized as a "younger person"[1] for purposes of Social Security benefits. (Tr. 48). She has earned a high school degree, a nursing degree in India, and was certified as a nurse's assistant in the United States. (Tr. 62, 172-173). Her prior work experience involves many years of employment as a nurse's assistant. (Tr. 57).

B. Plaintiff's Statements and Testimony

Plaintiff states that she stopped working at her last job, nurse's assistant at Moss Rehabilitation Hospital, in March of 1998 due to severe back pain. (Tr. 159). This position required her to lift patients into and out of beds, chairs, and showers. (Tr. 172). Plaintiff states that she hurt her back lifting patients in this manner. (T.R. 175).

For her pain, Plaintiff initially took Percocet and Morphine, but suffered an allergic reaction to these medications. (Tr. 170) Since then, she has taken over-the-counter medications (Motrin and Tylenol) which reduce, but do not eliminate, the pain. (Tr. 162, 165)

Plaintiff testified that one doctor, Dr. Richard S.

[1]A "younger person" is under the age of 50. "The Commissioner does not consider that age will seriously affect a younger person's ability to adapt to a new work situation." 20 C.F.R. 404.1563(c) (2001).

Levenberg, suggested surgery to remove the bulging disc. (Tr. 161). Plaintiff declined surgery because the doctor could not guarantee that it would resolve her back pain. (Tr. 171).

At the ALJ hearing, Plaintiff testified that she has pain whenever she is standing or sitting, and cannot lift anything. (Tr. 163, 164). She testified that she can stand for 25 minutes, sit for 20-25 minutes, and walk for 5 minutes before she needs to lie down and rest. (Tr. 164-167). Plaintiff claims that as a result, she cannot perform simple household chores such as laundry, cooking, and cleaning, and therefore requires the aid of her husband, as well as relatives that have to come to her apartment to help take care of her. (Tr. 167-168).

III. Vocational Expert Testimony

A vocational expert, Ms. Carolyn E. Rutherford, testified at the Administrative hearing that Plaintiff's past work is categorized as "semi-skilled" and at the "heavy" exertional level. (Tr. 177-78) She was asked no hypothetical questions.

IV. Medical History

A. Back Pain

D. Edward M. Bleeden, M.D., was plaintiff's primary care physician from 1991 until 2001. During this time, he prescribed prescription and over-the-counter medications, epidural injections, physical therapy, and restricted her

activity.[2] (Tr. 58, 162).

Plaintiff had abdominal surgery in 1991 and 1992, 1998, and a hysterectomy in 1998. (Tr. 129).

On Feb. 22, 1999, Plaintiff visited Dr. Bleeden complaining of pain in her abdomen and legs after standing for one hour. (Tr. 90). Dr. Bleeden prescribed an epidural injection for the pain and physical therapy. (Tr. 90). Due to Plaintiff's pain, which she subjectively rated at 2/10 at best, and 10/10 at worst, physical therapy was unable to determine Plaintiff's flexibility. (Tr. 129). The Physical Therapist noted that she had a decreased ability to perform activities of daily living. (Tr. 129).

Plaintiff had an MRI on January 14, 2000, that revealed degenerative disc disease at L4-5 and L5-S1. (Tr. 112). She saw Dr. Bleeden on Jan. 19, and Feb. 15 of 2000, complaining of back pain and Dr. Bleeden noted that she should avoid all lifting. (Tr. 86).

Plaintiff was referred to Dr. Richard J. Levenberg for an orthopedic evaluation and treatment. Dr. Levenberg treated the Plaintiff from Mar. 28, 2000, through Apr. 11, 2000. On March 28, Plaintiff complained of lower back pain radiating

[2] As memoranda from both parties illustrate, it is often difficult to determine what sections of a doctor's notes are subjective statements from the patient and what sections contain the doctor's own medical opinion. Therefore, the following paragraphs discussing Plaintiff's medical history will state the symptoms Plaintiff complained of in a visit and the treatment prescribed by the doctor.

through her lower extremities that she rated at 6/10. (Tr. 141). An MRI conducted on April 4 revealed an L4-5 disc bulge without herniation and an L5-S1 disc bulge with a small central disc protrusion. (Tr. 139). Dr. Levenberg then prescribed physical therapy, epidural injections, and possible surgery. (Tr. 137, 161).

In September 2000, Plaintiff flew to India to see Dr. V. Sivankutty, an orthopedic physician and surgeon at the Government Hospital in Sasthamcotta, Kollam, India. Dr. Sivankutty treated the Plaintiff from Sep. 6 until Nov. 7, 2000. Dr. Sivankutty noted degenerative disc disease and upon discharge told Plaintiff to "take absolute bed rest and avoid strenuous duty and exercise that may aggravate the symptoms." (Tr. 151).

B. Gynecological Treatment

Concurrent with her back problems, Plaintiff suffered from complications relating to her hysterectomy. She underwent a supracervical hysterectomy, performed by Dr. Christina S. Chu, M.D., on Jun. 18, 1998. Plaintiff was feeling well immediately after the procedure, but on July 25, 1998, Plaintiff went to the Emergency Room at the Hospital of the University of Pennsylvania with severe abdominal pain, rated by the plaintiff as 10/10. (Tr. 78). The attending physician, Dr. Waleed S. Shalby, opined that the pain resulted from a suprafascial hematoma and prescribed over-the-counter medication and told her not to do any

lifting over 5lbs. and to avoid driving. (Tr. 79-80). In a follow-up visit with Dr. Parrott on Sept. 15, 1998, Dr. Parrot told Plaintiff to avoid "heavy lifting and prolonged standing".[3] (Tr. 136).

Plaintiff had follow-up visits in November and December 1998 with Dr. Michael Mooreville, M.D., at the Urology Care Center, where she complained of persistent pain in her abdomen. (Tr. 89) Urological tests were negative and Dr. Mooreville opined that the pain was caused by scarring following surgery. (Tr. 89)

C. Residual Functional Capacity Assessment

A Residual Functional Capacity Assessment (hereinafter, "RFCA") was performed in May 2000, and indicated that the Plaintiff could occasionally lift twenty pounds, frequently lift ten pounds, and either sit, stand, or walk for six hours in an

[3] The Commissionser argues in his Brief in Support of Motion for Summary Judgment that the ALJ was reasonable in believing that Dr. Parrot's notes on Tr. 135-136 should be read to show that the doctor believed the Plaintiff could perform sedentary work. This interpretation is contrary to the plain language of his notes. The question clearly asks, "Limitations (what the patient CANNOT do)", to which the doctor wrote, "sedentary work". The most straightforward reading indicates that, according to Dr. Parrot's notes, the patient CANNOT do "sedentary work". This is the clear reading, and should not be discredited absent compelling evidence to the contrary. In support of its interpretation, the Commissioner suggests only that his interpretation would be consistent with the doctor's other restrictions on heavy lifting and driving. However, interpreting the doctor's statements to prohibit the Plaintiff from sedentary work is ALSO consistent with his restrictions on heavy lifting and driving, and is the interpretation most clearly supported by the plain language of the question.

eight hour day.[4] (Tr. 144). There is no mention in the report of any evidence that supports these conclusions.

V. Discussion

A. Standard of Review

The role of this Court upon judicial review is to determine if substantial evidence in the administrative record supports the Commissioner's final decision. See Stunkard v. Sec'y of Health and Human Serv., 841 F.2d 57, 59 (3d Cir. 1988). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citations omitted). It is more than a mere scintilla of evidence but may be less than a preponderance. See Stunkard, 841 F.2d at 59. In order to determine whether a finding is supported by substantial evidence, however, the reviewing tribunal must review the record as a whole. See 5 U.S.C. 706. When the Commissioner is confronted with conflicting evidence, he must adequately explain in the record the reasoning for rejecting or discrediting otherwise competent evidence. Sykes v. Apfel, 228 F.3d 259 (3d Cir. 2000).

B. Burden of Proof in Disability Proceedings

[4] The Commissioner's Brief in Support of Motion for Summary Judgment states that the disability adjudicator wrote that the patient was able to "bend and touch her toes *according to her treating physician's notes*...". (Defendant's Brief at 9) (italics added). This Court notes that the treating physician's report that the RFCA refers to was from a November 1999 visit, six months prior to the RFCA.

In order to be found disabled under the Act, a Plaintiff must carry the initial burden of demonstrating that he/she is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment . . . which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. 423 (d)(1)(A); 20 C.F.R. 404.1505(a). Plaintiff may establish a disability through: (a) medical evidence meeting one or more of the serious impairments detailed in 20 C.F.R., Part 404, Subpart P, App.1; or (b) proof that the impairment is severe enough that Plaintiff cannot engage in any type of "substantial gainful work which exists in the national economy." Heckler v. Campbell, 461 U.S. 458, 460 (1983); 42 U.S.C. 423(d)(2)(A). Under the first method, a plaintiff is considered *per se* disabled by meeting one of the "listed" impairments. Under the second method, a Plaintiff must initially demonstrate that a medically determinable disability prevents her/him from returning to employment. See Brown v. Bowen, 845 F.2d 1211, 1214 (3d Cir. 1988). If a plaintiff proves that her/his impairment results in functional limitations to performing her/his past relevant work, then the burden of proof shifts to the Commissioner to prove that work does in fact exist in the national economy which plaintiff is capable of performing given his or her age, education, and work experience. See Mason v. Shahala, 994 F.2d 1058, 1064 (3d

Cir. 1993).

C. Review of the Administrative Law Judge's Opinion

Plaintiff has presented a motion to this Court to vacate the ALJ's decision to deny benefits and remand for proper consideration of the issues involved.

Plaintiff argues that: (a) the Commissioner erred in evaluating the medical evidence of the treating physicians, (b) the Commissioner erred in determining the Plaintiff's Residual Functional Capacity, and that (c) the Commissioner erroneously evaluated the testimony and credibility of the Plaintiff.

1. The ALJ's Evaluation of Conflicting Medical Evidence, and His Subsequent Assessment of Plaintiff's RFC was not Supported by "Substantial Evidence".

In the present case, Plaintiff contends, and the ALJ agrees, that Plaintiff cannot return to her previous work as a nurse's assistant. The burden then shifts to the Commissioner to prove that Plaintiff retains the Residual Functional Capacity (hereafter, "RFC") to perform gainful employment in the national economy.

The evidence presented from the Plaintiff's treating physicians does not support the ALJ's decision that Plaintiff retains the RFC to perform sedentary work[5]. In July 1998, Dr.

[5]"Sedentary work" is defined in 20 C.F.R. 404.1567 as follows:
Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or

Shalby told Plaintiff not to do any lifting over five pounds, and in a follow-up visit, Dr. Parrot told Plaintiff to avoid heavy lifting and prolonged standing. (Tr. 79, 136). Plaintiff's physical therapist noted in February 1999 that she had a decreased ability to perform activities of daily living. (Tr. 129). In January 2000, Dr. Bleeden told Plaintiff to avoid all lifting. (Tr. 86). In September 2000, Dr. Sivankutty told Plaintiff to avoid strenuous duty and take absolute bed rest. (Tr. 151). Thus, all of Plaintiff's treating physicians have instructed her to avoid the type of lifting and standing required for sedentary work.

Instead of crediting the evaluations of the treating physicians, the ALJ responds by arguing that the Plaintiff has not identified "any objective clinical signs or laboratory findings of 'serious' exertional limitations from qualified medical sources." (Defendant's Motion for Summary Judgment, pg. 14) However, as noted earlier, the burden at this step rests with the Commissioner to prove a residual functional capacity. Certainly the RFCA is relying on no stronger "clinical signs or

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> carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally. "Occasionally" means occurring from very little up to one-third of the time, and would generally total no more than about 2 hours or an 8-hour workday. Sitting would generally total about 6 hours of an 8-hour workday.

laboratory findings" in its assessment of Plaintiff's condition. Therefore, this response is not a sufficient explanation for discrediting the Plaintiff's treating physicians and relying fully on the RFCA.

The ALJ attempts to support his determination by citing to medical literature to imply that the Plaintiff's condition is not serious enough to warrant disability benefits. These definitions state that Degenerative Disc Disease does not usually cause serious pain, but stop short of stating that they may never cause such pain.

Defendant's Brief also cites cases supporting the proposition that an ALJ may infer from a patient's use of over-the-counter medication that the patient is not in "serious" pain. The cases that support this proposition do not address a situation where the patient has a demonstrated allergy to at least some forms of prescription medication. Because Plaintiff has an allergy to some prescription medication, the inference that she is not in severe pain because she is only taking over-the-counter medication is not justified.

The ALJ relies exclusively on the opinions stated in the RFCA to determine Plaintiff's eligibility. The RFCA is the only report on record that would support the ALJ's conclusion that Plaintiff could perform sedentary work. The RFCA, however, is unaccompanied by any other written reports. Because the RFCA

is uncorroborated and conflicts with the reports of the claimant's treating physician, its "reliability is suspect." See Brewster v. Heckler, 786 F.2d 581, 585 (3d Cir. 1986).

The ALJ does not explain why the RFCA is accepted fully and no weight is given to the reports of treating physicians. It is well established that an ALJ must make clear on the record his reasons for rejecting the opinions of treating physicians when they conflict with nontreating physicians, as the former are generally given more weight. Brewster, at 585. Furthermore, the medical judgment of a treating physician can only be discarded when there is conflicting medical evidence. Frankenfield v. Bowen, 861 F.2d 405, (3d Cir. 1988).

2. The ALJ Erred by not Explaining His Determination that the Plaintiff's Testimony was not "Credible".

In his opinion, the ALJ makes the finding that, "The claimant's statements concerning her impairments and their impact on her ability to work are exaggerated and not entirely credible." (Tr. 20). However, the ALJ gives little explanation of why the statements and testimony are exaggerated. Instead, he relies only on the argument that the Plaintiff was not in as severe pain as she complained of because she was only taking over-the-counter medication. (Tr. 19). When an ALJ concludes that some or all of a claimant's statements are not credible, he must point to evidence that supports his conclusion. Breitel v.

Barnhart, 2002 U.S. Dist. LEXIS 12120 (E.D.Pa.). As explained earlier, due to the fact that Plaintiff was allergic to prescription medication, an inference that pain is not severe because the Plaintiff was not taking prescription medication is unfounded. In order to correctly conclude that the Plaintiff's statements were not fully credible, the ALJ must rely on different evidence in support of that position, or else find the statements credible and afford them proper weight.

VI. Conclusion

For these reasons, Plaintiff's Motion for Summary Judgment is granted. The decision of the ALJ to deny DIB to Plaintiff is remanded for further explanation of the resolution of conflicting medical evidence and the determination of Plaintiff's credibility, consistent with this opinion. An appropriate Order will follow.

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Clarence C. Newcomer, S.J.

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COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	NO. 01-5837

O R D E R

AND NOW, this day of June, 2003, upon consideration of the Parties' Cross Motions for Summary Judgment, it is hereby ORDERED that Plaintiff's Motion is GRANTED and Defendant's Motion is DENIED.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.